

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2546 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

STATE OF GUJARAT

Versus

KASHIRAM DHANJIBHAI KANTHARIA

Appearance:

MR DA BAMBHANIA for Petitioner
MR PAHWA for M/S THAKKAR ASSOC. for
Respondent No. 1 to 5.
GOVERNMENT PLEADER for Respondent No. 6

CORAM : MR.JUSTICE R.R.JAIN

Date of decision: 24/04/97

ORAL JUDGEMENT

Heard Mr.Bambhania for the Petitioner and
Mr.Pahwa on behalf of Respondents Nos.1 to 5 appearing on
caveat.

2. Rule. Service of Rule is waived by Mr.Pahwa for Respondents Nos.1 to 5.

3. The order dated 29.4.1995 passed by the Urban Land Tribunal confirming the order passed by the Competent Authority on 31.8.1994 declaring 6973.442 square metres of land as excess land has been challenged by the petitioner - State of Gujarat under Articles 226 and 227 of the Constitution of India. Before dealing with the merits of the case, it would be worthwhile to state that the order passed by the Competent Authority declaring excess land was challenged by the respondent aggrieved party before the Tribunal by filing Appeal No.Surat-4 of 1995, but the same was dismissed by the order dated 29.4.1995. The State of Gujarat though alleged to have not been satisfied with the order the Competent Authority never challenged. In absence of challenge, the Government petitioner shall be deemed to have accepted the order and thereby becomes binding and final qua the petitioner. Once having accepted the binding nature of the order, it shall not be open for the petitioner to challenge the order passed by the Tribunal confirming the said order. By challenging the order of appellate authority which confirmed the order of Competent Authority, the petitioner is indirectly challenging the original order. The acts which cannot be done directly cannot be permitted to be done indirectly. Therefore, in my view, this petition would not be maintainable as by the order of the Tribunal no new finding is given. What is done by the Tribunal is confirmation of the order passed by the Competent Authority which was never challenged by the petitioner before the appropriate forum.

4. It is true that the petitioner by filing this petition has challenged both the orders, namely, the order passed by the Competent Authority and that by the Tribunal but, for the reasons stated above, as the petitioner did not challenge the order of the Competent Authority before the Tribunal at the initial stage, shall be deemed to have waived the right.

5. Apart from this fact, the petition is filed after more than two years. I do not find any satisfactory explanation with regard to the delay. As a cardinal rule, powers of this court under Articles 226 and 227 of the Constitution of India are extraordinary and discretionary powers and a person/ petitioner who is indolent, tardy and lethargic shall not be permitted to invoke such jurisdiction. Exercise of such powers after inordinate delay may result into injustice to respondents

as well as third parties. In a given case it may so happen that in between the intervening period something might have settled or some rights might have been created or accrued either in favour of petitioner or a third party and by exercising writ jurisdiction the court would be unsettling the matters which are settled or would be taking away the rights accrued whereby instead of doing justice the court would become instrumental in doing injustice.

6. In the result, I find no substance in this petition and is rejected. Rule is discharged accordingly.

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